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9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 *In re: Kia Engine Litigation*

Case No.: 8:17-cv-00838-JLS-JDE

14 }
15 } **CLASS ACTION**
16 }

17 } **PLAINTIFFS' MEMORANDUM OF**
18 } **LAW IN SUPPORT OF THEIR**
19 } **UNOPPOSED MOTION FOR THE**
20 } **APPOINTMENT OF INTERIM CLASS**
21 } **COUNSEL**
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1 Plaintiffs Christopher Stanczak, Rose Creps, Cara Centko, and Jenn Lazar
2 (together, “Plaintiffs”), submit this Memorandum of Law in support of their Unopposed
3 Motion for Appointment of Interim Class Counsel.¹ As demonstrated below, the
4 appointment of Matthew Schelkopf of Sauder Schelkopf LLC and Adam Gonnelli of the
5 Sultzer Law Group as Interim Co-Lead Counsel, and the appointment of Bonner Walsh
6 of Walsh PLLC to the Executive Committee, (collectively, “Proposed Interim Class
7 Counsel”) is in the best interest of the Class. *See* Fed. R. Civ. P. 23(g). Accordingly,
8 Plaintiffs, by and through their attorneys, respectfully request that the Court enter the
9 accompanying Proposed Order (“Order”) appointing Interim Class Counsel.

10 **I. INTRODUCTION**

11 This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a
12 class of current and former owners and lessees with Theta 2.0-liter and 2.4-liter gasoline
13 direct injection engines (the “GDI Engines”) installed in certain 2011-2016 Kia Optima,
14 Sorento and Sportage vehicles (the “Class Vehicles”). (Consolidated Amended
15 Complaint (“Compl.”) at ¶ 1.) This action arises from Defendants’ failure to disclose to
16 Plaintiffs and similarly situated consumers, despite their longstanding knowledge, that the
17 engines in the Class Vehicles contain, inter alia, a latent defect that results in the
18 restriction of oil flow through the connecting rod bearings, as well as to other vital areas
19 of the engine. (Compl. at ¶ 2.) This defect – which typically manifests itself during and
20 shortly after the limited warranty period has expired – will cause the Class Vehicles to
21 experience vehicle stalling during operation and catastrophic engine failure. (*Id.*)

22 As detailed in the Complaint, there have been three prior recalls of the GDI
23 Engines. First, Hyundai – which owns one-third of Kia Motor Corporation’s stock –
24 recalled certain model year 2011-2012 Hyundai Sonata vehicles equipped with the GDI
25 Engines. (Compl. at ¶ 77.) This recall was issued because Hyundai determined that metal
26 debris may have been generated from factory machining operations as part of the

27
28 ¹ Kia does not oppose the leadership structure proposed in Plaintiffs’ motion, without endorsing all
Plaintiffs’ characterizations of the underlying events

1 manufacturing of the engine crankshaft during December 11, 2009, to April 12, 2012.
2 (Compl. ¶ 78.) Second, between May 25 and June 10, 2016, Kia followed suit and
3 recalled 2011-2014 Optima vehicles due to issues with the same connecting rod wear in
4 the GDI Engines. (Compl. at ¶ 83.) Third, in April 2017, Hyundai and Kia jointly
5 recalled an additional 1.4 million vehicles with the GDI Engines because of widespread
6 reports that were failing and stalling for the same reasons. (Compl. at ¶ 84.) This recall
7 included the 2013-2014 Hyundai Santa Fe, the 2011-2014 Kia Optima, the 2011-2013
8 Kia Sportage, and the 2012-2014 Kia Sorento. (*Id.*)

9 Despite these recalls, Kia has failed to adequately repair the recalled 2011-14 Kia
10 Class Vehicles. (Compl. ¶ 85.) Instead, the parts required to conduct the repair are
11 typically unavailable, on nationwide backorder and/or no longer being manufactured.
12 (*Id.*) This has resulted in Class Members being without the use of their vehicles for weeks
13 and/or months at a time and incurring additional and unreimbursed expenses such as
14 rental vehicles. (*Id.*) Furthermore, when repaired, Kia often utilizes used replacement
15 parts which fail to adequately place Class Members in the same position as prior to such
16 engine failures. (*Id.*)

17 On May 10, 2017, plaintiffs Cara Centko and Jenn Lazar filed their complaint in
18 the Central District, which was assigned to this Court. On August 8, 2017, plaintiffs
19 Christopher Stanczak and Rose Creps filed their complaint which was also assigned to
20 this Court. Counsel for plaintiffs in both actions agreed to prosecute the claims jointly,
21 and so informed the defendant. Meanwhile, on January 22, 2018, a case styled *Brogan v.*
22 *Hyundai Motors America*, No. 7:18-cv-00525, was filed in the United States District
23 Court for the Southern District of New York. The *Brogan* case also included claims
24 against Kia entities for the same conduct addressed in this case. On October 2, 2017, the
25 Court consolidated the Centko and Stanczak cases for all purposes. On February 2, 2018,
26 plaintiffs filed the operative pleading in this action.

27 The undersigned firms all support the appointment of the Proposed Interim Class
28 Counsel structure.

1 Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, the Court has the
2 discretion to designate interim counsel. Proposed Interim Class Counsel are well
3 qualified to represent the putative Class, with substantial experience representing
4 consumers in similar automotive defect cases, extensive knowledge of the applicable law
5 and have invested substantial time communicating with hundreds of members of the
6 putative class. Proposed Interim Class Counsel are ready, willing and able to continue to
7 devote the personnel and resources required to zealously prosecute this litigation and
8 represent the Class.

9 As shown below, Proposed Interim Class Counsel readily meets the requirements
10 of Federal Rules of Civil Procedure, Rule 23(g). Plaintiffs therefore respectfully request
11 this Court appoint Matthew Schelkopf of Sauder Schelkopf LLC and Adam Gonnelli of
12 the Sultzer Law Group as Interim Co-Lead Counsel, and appoint Bonner Walsh of Walsh
13 PLLC to the Executive Committee, to protect the interests of the Class and to promote an
14 efficient adjudication of this and any related case(s) filed in, transferred to, or removed to
15 this Court.

16 **II. ARGUMENT**

17 Rule 23(g)(3) of the Federal Rules of Civil Procedure provides that a district court
18 may “designate interim counsel to act on behalf of a putative class before determining
19 whether to certify the action as a class action.” To fulfill this objective effectively, courts
20 routinely appoint interim counsel at early stages of the litigation prior to any
21 determination of class certification. *See, e.g., In re Samsung Elecs. Am., Inc. Blu-ray*
22 *Class Action Litig.*, No. 2:08-cv-00663-JAG-MCA (D.N.J.) (appointing interim co-lead
23 counsel on the same day the motion to dismiss was filed); *In re LG Front Load Washing*
24 *Mach. Class Action Litig.*, No. 2:08-cv-00051-FSH-MAS (D.N.J.) (appointing interim
25 lead and liaison counsel with an executive committee before the motion to dismiss was
26 decided); *Lax v. Toyota Motor Corp.*, No. 14-cv-01490-WHO, ECF No. 34 (N.D. Cal.
27 Aug. 14, 2014) (appointing Interim Co-Lead Counsel on the same day the defendant’s
28 motion to transfer was denied).

Interim appointment is consistent with the many tasks counsel must perform on behalf of the proposed class prior to class certification, which may include the following:

1. Present (to the court or defendants) the position of plaintiffs and the proposed class on matters arising during pretrial proceedings;
2. Conduct all discovery and motion practice;
3. Conduct settlement negotiations and, where appropriate, present a proposed settlement to the court on behalf of the proposed class;
4. Delegate specific tasks to other counsel, in a manner designed to ensure that pretrial preparation for plaintiffs and the proposed class is conducted efficiently and effectively;
5. Enter into stipulations with opposing counsel;
6. Prepare and distribute status reports to any other law firms that might seek to represent the proposed class;
7. Maintain adequate time and disbursement records covering services as interim counsel;
8. Monitor the activities of any other law firms that might seek to represent the proposed class to ensure that schedules are met and unnecessary expenditures of time and funds are avoided; and
9. Perform any other duties that may be incidental to the proper prosecution and coordination of pretrial activities.

Manual for Complex Litigation ¶¶ 10.221, 40.22 (4th ed. 2004).

The appointment of interim counsel clarifies the attorneys' roles and responsibilities, formally empowers them to act in the best interests of the proposed class, and assures defense counsel that they are dealing with the authorized representatives of the proposed class. *See generally id.* at § 21.11 (discussing the reasons that "[b]efore ruling on class certification, a judge should address . . . [w]hether to appoint interim class counsel . . ."); *see also n re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D. 552, 559 (S.D. Ohio 2005) (explaining duties of interim counsel). Even where there is but one pending action, appointment of interim counsel will clarify who bears the responsibility for protecting the interests of the putative class. *See, e.g., Ross v. Jack Rabbit Servs., LLC*, No. 3:14-CV-00044-TBR, 2014 WL 2219236, at *5 (W.D. Ky. May 29, 2014) (appointing interim counsel despite pendency of only one class action brought by a single

1 plaintiff). The appointment of interim counsel also eliminates any risk that a defendant
2 will try to play rival class counsel against one another to the possible detriment of the
3 class. *Governance and Legitimacy in the Law of Class Actions*, 1999 SUP. CT. REV. 337,
4 388 (discussing the danger of a “race to the bottom” situation).

5 As discussed below, Proposed Interim Class Counsel are highly qualified, will
6 fairly and adequately represent Plaintiffs and members of the putative Class, and their
7 appointment at this stage in the litigation is most appropriate.

8 **1. Standards for Appointing Interim Class Counsel**

9 A court may designate interim counsel to act on behalf of a putative class before
10 determining whether to certify the action as a class action. *Paraggua v. LinkedIn Corp.*,
11 No. 12-03088, 2012 U.S. Dist. LEXIS 123226, at *6, (N.D. Cal. Aug. 29, 2012) (citing
12 FED. R. CIV. P. 23(g)(3)).

13 Under [Fed. R. Civ. P. 23(g)], the court considers: ‘(i) the work
14 counsel has done in identifying or investigating potential claims in the
15 action; (ii) counsel's experience in handling class actions, other
16 complex litigation, and the types of claims asserted in the action; (iii)
17 counsel's knowledge of the applicable law; and (iv) the resources that
18 counsel will commit to representing the class.’ The court may also
19 ‘consider any other matter pertinent to counsel's ability to fairly and
20 adequately represent the interests of the class.’

21 *Id.*

22 **2. Proposed Interim Class Counsel Has Significant Relevant Experience**
23 **and Knowledge of the Applicable Law**

24 As courts evaluating the adequacy of representation requirement at the class
25 certification stage have repeatedly held, a class is fairly and adequately represented where
26 counsel are qualified, experienced, and generally able to conduct the litigation on its
27 behalf. *See, e.g., Brazil v. Dole Packaged Foods, LLC*, No. 12-01831, 2014 U.S. Dist.
28 LEXIS 74234, at *35 (N.D. Cal. May 30, 2014); *Wolph v. Acer Am. Corp.*, 272 F.R.D.
477, 487 (N.D. Cal. 2011); *Nat'l Fed'n of the Blind v. Target Corp.*, 582 F. Supp. 2d
1185, 1202 (N.D. Cal. 2007); *In re TFT-LCD Antitrust Litig.*, 267 F.R.D. 583, 594 (N.D.
Cal. 2010); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 512

(S.D.N.Y. 1996) (class counsel satisfy adequacy requirement where they are able to prosecute the action vigorously).

The qualifications and experience of Interim Class Counsel in federal and state courts and, specifically, in complex class actions involving product defects and consumer fraud are set forth in the accompanying firm resumes and declarations. (*See* Declaration of Matthew Schelkopf, attached hereto as Exhibit 1; Declaration of Adam Gonnelli, attached hereto as Exhibit 2.)

Sauder Schelkopf LLC

Sauder Schelkopf has significant experience in consumer class actions, including those involving defective products. Recently, Sauder Schelkopf attorneys have been appointed to leadership positions and prosecuted the following product defect and consumer cases:

- Appointed as Class Counsel and achieved final approval of a class settlement by Judge George Caram Steeh in *Tolmasoff v. General Motors, LLC*, No.: 2:16-cv-11747 (E.D. Mich.) in a case involving a claim of overstated miles-per-gallon in GM vehicles.
- Appointed as Co-Lead Interim Co-Lead Counsel by Judge Madeline Cox Arleo in *Bang v. BMW of North America, LLC*, No.: 2:15-cv-6945 (D.N.J.) in a case involving a claim of a vehicle defect causing excessive oil consumption.
- Appointed as Co-Class Counsel in *Yaeger v. Subaru of America, Inc.*, No. 1:14-cv-04490 (D.N.J.), in a case involving a claim of a vehicle defect causing excessive oil consumption, and Chief Judge Simandle in granting final approval of a settlement on behalf of 577,860 class members, observed that Sauder Schelkopf attorneys were “more than adequate to the task and faithful to the interests of absent class members.” *Id.* at ECF No. 107.
- Appointed as Co-Class Counsel in *Mendoza v. Hyundai Motor Co.*, No. 5:15-cv-01685 (N.D. Cal.) and achieved final approval of a class settlement related to premature engine failure in certain Hyundai vehicles.
- Appointed as Co-lead Counsel in *Cole v. NIBCO, Inc.*, No. 3:13-cv-07871-FLW-TJB (D.N.J.) a class action lawsuit on behalf of consumers who purchased NIBCO’s allegedly defective plumbing products, including PEX tubing and clamps, or otherwise had those plumbing products installed in their homes or other structures.
- Achieved a \$14 million joint settlement in *Klug v. Watts Regulator Co.*, No. 8:15-cv-61 (D. Neb.) and *Ponzo v. Watts Regulator Co.*, No. 8:16-200 (D. Neb.) on behalf of consumers with allegedly defective toilet connectors and

water heater connectors manufactured by Watts.

The Sultzer Law Group

The Sultzer Law Group focuses on complex civil litigation nationwide. The firm is headquartered in Poughkeepsie, New York, with additional offices in New York City and New Jersey. Since its founding in 2013, the firm has acted as lead counsel in a number of high-profile consumer class action cases. The firm's class action practice group is included in Martindale-Hubbell's Bar Register of Preeminent Lawyers for Class Actions and has also been featured in numerous publications, including Law360, Inside Counsel Magazine, Risk Management Magazine, and CNBC News. Mr. Sultzer, the firm's founding partner, has 20 years of significant experience related to both prosecuting and defending class actions. Prior to opening The Sultzer Law Group, he served as the co-chairman of the Class Action Practice Group of one of the largest law firms in the country, and he has written and lectured extensively on class action practice. Partner Adam Gonnelli has served as lead or co-lead counsel in numerous high-profile class action cases throughout the country resulting in multi-million dollar recoveries to consumers, employees, and investors.

The Sultzer Law Group has advocated for consumers' rights, successfully challenging some of the nation's largest and most powerful corporations for a variety of improper, unfair, and deceptive business practices. In addition, the firm has also acted as lead counsel in the following representative cases, many of which involve claims for false advertising of consumer products:

- *Baumgarten v. Cleanwell, LLC*, 1:16-cv-01780 (E.D.N.Y.) (obtained preliminary approval for injunctive relief regarding representations that the products were natural)
- *Davenport v. Discover Financial Serv.*, 1:15-cv-06052 (N.D. Ill.) (\$5m recovery in TCPA case);
- *Foster, Andrew Tyler et al. v. L-3 Communications EOTECH, Inc., et al.*, 15-cv-03519 (W.D. Mo.) (obtained monetary recovery for consumers who purchased falsely advertised holographic weapons sights);

- *Nicotra, Jennifer et al. v. Babo Botanicals, LLC*, 16-cv-00296 (E.D.N.Y.) (obtained injunctive relief against company for claiming products were natural);
- *Run Them Sweet, LLC v. CPA Global, Ltd., et al.*, 1:16-cv-1347 (E.D. Va.) (obtained a settlement fund of \$5,600,000 for consumers who were overcharged for foreign patent renewal services);
- *Rapoport-Hecht, Tziva et al. v. Seventh Generation, Inc.* (SDNY 14-cv-9087) (\$4.5m recovery); and
- *Vincent, Wesley, et al. v People Against Dirty, PBC. and Method Products, PBC.*, (SDNY 7:16-cv-06936-NSR) (\$2.8m recovery).

Walsh PLLC

Mr. Walsh's experience with handling consumer class actions supports his firm's appointment to the Executive Committee in this case. The appointment of Mr. Walsh to the Executive Committee will help to streamline discovery and any disputes with defense counsel regarding discovery. Mr. Walsh has been certified as class counsel in previous nationwide and state class actions and has used his expertise to garner substantial victories for plaintiffs and class members resulting in over \$500,000,000.00 in total benefits to those classes of consumers. Representative cases include:

- *Eatmon v. Palisades Collection LLC*, No. 2:08-cv-00306 (E.D. Tex. Mar. 24, 2010) (Order adopting report and recommendations to certify class and appoint class counsel);
- *Lantrip v. Dodeka L.L.C.*, No. 2:08-cv-00476 (E.D. Tex. Sept. 15, 2011) (Order granting final approval of settlement and appointing class counsel);
- *Taylor v. Apex Financial Management*, No. 2:09-cv-00229-TJW (E.D. Tex. Sept. 21, 2010) (Order Granting Class Certification and appointing class counsel);
- *Walker v. Asset Acquisition Group, L.L.C.*, No. 9:10-cv-185 (E.D. Tex. Aug. 25, 2011) (Order Granting Class Certification and appointing class counsel);

- 1 • *Bobby Prescott and Pamela White v. Autovest, L.L. C.*, 2:11-cv-00219, (E.D. Tex.
2 October 28, 2011) (Order Conditionally Certifying Class, Granting Approval and
3 appointing class counsel);
- 4 • *Michael Cox, et al v. Hilco Receivables, LLC and Central Credit Services, Inc.*,
5 3:09-cv-0897, (N.D. Tex. Sept. 16, 2011) (Order Granting Preliminary Approval
6 and appointing class counsel);
- 7 • *In Re: Shop-Vac Marketing and Sales Practices Litigation*, MDL 2380 (M.D.
8 Pennsylvania, December 9, 2016) (Memorandum by Judge Kane in support of
9 Final Approval, Walsh PLLC active Executive Committee member); and
- 10 • *Foster, et. al v. L-3 Communications EOTech, Inc. et. al* (W.D. MO July 7, 2017)
11 (Order Granting Final Approval, Walsh PLLC appointed Co-Lead counsel).

12 In addition to experience with consumer class actions, Mr. Walsh holds a B.S in
13 Physics, enabling him to deal with experts effectively and knowledgeably, giving
14 Plaintiffs an advantage in the efficient gathering of evidence. Prior to attending law
15 school, Mr. Walsh did significant research concerning defects in metals and gained a
16 familiarity with laboratory testing protocols as well as analytical tools beyond those
17 normally found in an attorney's toolkit. Mr. Walsh's research paper, *Segregation of*
18 *Solutes In Two-Phase Mixtures*, was published in *Hyperfine Interactions*—a journal
19 devoted to physics and chemistry. Additionally, Mr. Walsh presented his research, *Site*
20 *Preferences of Solutes In The Two-phase Field Between Pd₃Ga₇ And PdGa*, to the
21 American Physics Society. Walsh's scientific expertise and experience handling complex
22 consumer litigation further supports his appointment as a member of the Executive
23 Committee.

24 In sum, Proposed Interim Class Counsel brings a wealth of litigation experience
25 representing consumers and leading class actions, including consumer class actions in
26 particular. This background provides it the specific experience and understanding of the
27 applicable law to be applied in this case.

1 **3. Proposed Interim Class Counsel Has Put Forth Significant Work in**
2 **Identifying and Investigating Potential Claims in the Action**

3 This Court has held the amount of time and effort counsel puts forth into the class
4 action lawsuit, even prior to class certification, is a significant factor in appointing
5 Interim Class Counsel. *See In re Apple & AT&TM Antitrust Litig.*, No. 07-05152, 2008
6 U.S. Dist. LEXIS 120061, at *9-10 (N.D. Cal. Apr. 15, 2008) (appointing interim counsel
7 in part because counsel invested significant time and effort into the case by investigating
8 factual issues and identifying and researching potential claims). Here, Proposed Interim
9 Lead Class Counsel has already spent hundreds of hours of attorney and paralegal time in
10 identifying and investigating potential claims in the Action, and then obtaining detailed
11 product failure information from hundreds of putative class members.

12 First, Proposed Interim Class Counsel conducted an extensive investigation into
13 the issues with the GDI Engines after being contacted by consumers complaining of
14 engine failures. Proposed Interim Class Counsel interviewed members of the putative
15 class regarding these issues, conducted an investigation into the potential causes and
16 Kia's design decisions, consulted experts in the automotive engineering field and drafted
17 a detailed Consolidated Class Action Complaint, clearly setting forth the cause and effect
18 of the defect in the GDI Engines.²

19 Second, Sauder Schelkopf attorneys served as class counsel in a prior litigation
20 involving the defective GDI Engines in certain model year Hyundai Sonata vehicles.
21 *Mendoza v. Hyundai Motor Co.*, No. 5:15-cv-01685 (N.D. Cal.). Final approval to a class
22 settlement was granted on January 31, 2017 by Judge Freeman. Because the defect in the
23 Class Vehicles in this litigation bears similarities to the defect at issue in *Mendoza*,
24 Sauder Schelkopf has a wealth of experience to draw from while prosecuting the instant
25 litigation.

26
27 ² According to the *Third Circuit Task Force Report on the Selection of Class Counsel*, the filing of a
28 well-prepared complaint after significant investigation is work relevant to the appointment of class
 counsel. Chief Judge Edward R. Becker, 74 TEMP. L. REV. 689, 772 (2001).

1 **4. Proposed Interim Class Counsel Has Committed, and Will Continue to**
2 **Commit, Significant Time and Resources to Litigate This Action**

3 As demonstrated by the work identified in section 3, *supra*, Proposed Interim Class
4 Counsel have already committed the time and effort of numerous attorneys to the legal
5 research, factual investigation, and prosecution of the case, and will continue to do so,
6 keeping in mind appropriate staffing levels for each project. Further, Proposed Interim
7 Class Counsel have commenced significant investigations of potential class member
8 claims, which are ongoing. Proposed Interim Class Counsel is ready, willing and able to
9 commit the resources necessary to litigate this case vigorously. *See Pecover v. Elec. Arts*
10 *Inc.*, No. 08-2820, 2010 U.S. Dist. LEXIS 140632, 69 (N.D. Cal. Dec. 21, 2010)
11 (appointing class counsel after considering “counsel’s work in identifying potential
12 claims, counsel's experience in handling class actions, other complex litigation, and the
13 types of claims asserted in this action, counsel’s knowledge of the applicable law as
14 evidenced by their memoranda and declarations submitted in this action and the resources
15 that counsel will commit to representing the class”); *In re Apple iPhone/iPod Warranty*
16 *Litig.*, No. 10-01610, 2014 U.S. Dist. LEXIS 64573, at *22-23 (N.D. Cal. May 8, 2014)
17 (confirming appointment of class counsel in part because class counsel prosecuted, and
18 would continue to prosecute, the case vigorously, effectively, and in the best interests of
19 the class members). Accordingly, Proposed Interim Class Counsel easily satisfies the
20 adequacy requirement of 23(g).

21 **5. Given the Complexity of the Action, the Proposed Case Leadership**
22 **Structure is Appropriate**

23 Plaintiffs and the Class will benefit from counsel working together in an organized,
24 collaborative and efficient manner, and the appointment of Interim Class Counsel will
25 further that objective and result. As discussed above, Proposed Interim Co-Lead Class
26 Counsel has communicated with hundreds of class members who have experienced the
27 defect, investigated the alleged defect, engaged in expert consultation regarding the
28 technical issues in the case, drafted a detailed Complaint and Consolidated Amended

1 Complaint, and successfully worked together in the organization of a proposed leadership
2 structure. In addition, the appointment of the Proposed Executive Committee will help to
3 streamline discovery and any discovery disputes with defense counsel. Because of the
4 breadth of Proposed Interim Class Counsel's experience and the substantial time and
5 effort they have invested in the Action, the appointment of the Proposed Interim Class
6 Counsel is in the best interest of the Class.

7 In addition, the accompanying proposed order submitted to the Court would grant
8 Interim Co-Lead Counsel authority over, *inter alia*, the following matters:

- 9 • to delegate and oversee the assignment of specific tasks to other counsel to
10 ensure the litigation is conducted efficiently and effectively;
- 11 • to maintain adequate time and disbursement records covering services;
- 12 • to determine and present the position of Plaintiffs and the putative class on
13 all matters;
- 14 • to coordinate and conduct discovery;
- 15 • Other firms will perform work on the case only when work is delegated to
16 them directly by Interim Co-Lead Counsel and all attorney time will be
17 entered on a weekly basis for review and approval to ensure all timekeeping
18 is accurate, reasonable, and further the needs of the case; and
- 19 • to perform other duties necessary to the proper prosecution of this litigation
20 on behalf of Plaintiffs and the putative class.

21 Thus, Interim Co-Lead Counsel shall have the responsibility to ensure that all attorney
22 time in this case is conducted efficiently and for the benefit of Plaintiffs and the putative
23 class.

24 **6. There Is a Competing Action**

25 The Court should also appoint Interim Class Counsel because there is a competing
26 action that was filed in the United States District Court for the Northern District of
27 Illinois on April 16, 2018, four months after the complaint was filed in this Action:
28 *Smolek v. Hyundai Motor Am...*, No. 1:18-cv-02716, (N.D. Ill.). Both the *Smolek* Action

1 and the instant Action seek to represent consumers who purchased vehicles with
2 defective Theta II engines, specifically the *Smolek* Action seeks to represent a class of
3 Illinois consumers with vehicles not subject to previous recalls and the instant Action
4 seeks to represent a nationwide class of all consumers that purchased vehicles with the
5 defective Theta II engine.³ While not explicitly required under Rule 23(g), Courts have
6 previously analyzed the presence of competing actions when ruling on a motion to
7 appoint interim counsel. *See, e.g., Yaeger v. Subaru of America, Inc.*, No. 14-
8 4490(JBS/KMW), 2014 WL 7883689, at *2 (D.N.J. Oct. 8, 2014) (discussing the absence
9 of any competing litigation and denying motion to appoint interim counsel); *Kuzian v.*
10 *Electrolux Home Prod., Inc.*, 937 F. Supp. 2d 599, 620 (D.N.J. 2013) (same).

11 Here, the presence of the second, tag-along action supports Plaintiffs' motion
12 because the "designation of interim counsel [will] clarif[y] responsibility for protecting
13 the interests of the class during precertification activities, such as making and responding
14 to motions, conducting any necessary discovery, moving for class certification, and
15 negotiating settlement." *Id.* (citing Manual for Complex Litigation, Fourth, § 21.11, at
16 246 (Fed. Judicial Center 2004)).

17 **III. CONCLUSION**

18 For the foregoing reasons, Plaintiffs respectfully request that the Court enter the
19 accompanying Order approving the Proposed Interim Class Counsel structure.

20
21 DATED: April 17, 2018.

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27 ³ The *Smolek* action names both Hyundai Motor America and Kia Motors America as Defendants,
28 despite their corporate separateness. Here, Proposed Interim Class Counsel has a separate case pending
against Hyundai Motor America, Inc.: *Kinnick v. Hyundai Motor America, Inc.*, No. 8:17-cv-02208-
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CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that on this 17th day of April, 2018, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

DATED: April 17, 2018.

Respectfully submitted,

By: /s/ Matthew D. Schelkopf
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